

3 Phil. 735

[G.R. No. 1705. April 22, 1904]

TOMAS BLANCO, PETITIONER, VS. BYRON S. AMBLER, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND JOSE MC-MICKING, CLERK OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENTS.

D E C I S I O N

MCDONOUGH, J.:

This is a proceeding praying for a writ of prohibition, prohibiting further proceedings in the Court of First Instance under an order appointing a receiver in the case of *Sergia Reyes vs. Fulgencio Tan-Tonco*, for the alleged reason that said court and judge were exercising judicial functions in excess of the jurisdiction of such tribunal and such judge.

It appears that in December, 1902, *Sergia Reyes* recovered a judgment in the Court of First Instance of Manila in an action for debt against one *Fulgencio Tan Tonco*, and that on the 19th of December of that year *Antonio Torres* was appointed receiver in that action, of the business of *Fulgencio Tan-Tonco*, his rights and credits of whatsoever nature or kind, together with all his movable and immovable property of whatsoever description, book accounts, contracts, etc., and said *Tan-Tonco* was required and commanded to deliver to said receiver all his property. And it was therein further ordered that all other persons be, and the same were, restrained and enjoined during the pendency of that action from interfering with or disposing of any of the property of the said defendant, or taking possession of, or in any way interfering with, the same, and said receiver was authorized to operate said business and to collect and receive all incomes therefrom and all debts due to said *Tan-Tonco*.

The petitioner herein, *Tomas Blanco* recovered judgment against said *Tan-Tonco*, April 3, 1903, for the sum of 1,000 pesos, which judgment, he alleges, he is unable to collect, and on which he is unable to obtain an execution against the property of said *Tan-Tonco*, because of

the transfer of said property to said receiver under said order, and because of the prohibition in said order against interfering with said property.

The petitioner contends that the order appointing the receiver in said action was void; inasmuch as the court acted without jurisdiction in making the said appointment, and he therefore asks this court to declare said appointment and said order void, and to issue a writ prohibiting the court below from taking further proceedings under said order.

In the case of *Bonaplata vs. Byron S. Ambler*, decided by this court August 1, 1903, and in which a writ of mandamus was granted, commanding said Byron S. Ambler, as judge of the Court of First Instance, to cause an execution to be issued in an action in favor of the plaintiff and against said Tan-Tonco, this court held that the court acted without authority of law in appointing a receiver in said action of Reyes against Tan-Tonco, for the reason stated in the decision of this court, which is reported in 1 Official Gazette, 607.^[1]

In cases where the court, having jurisdiction of the suit, as in the Reyes case, exceeds its legitimate powers, as, for instance, where it exceeds its powers in appointing a receiver improperly, a writ of prohibition will be granted to arrest further proceedings of the tribunal or officer who is exercising jurisdiction without authority.

It is true that the operation of a writ of prohibition is preventive rather, than remedial, but property in the hands of a receiver is in the hands of the court. A receiver is the mere instrument of the court, and what he does, the court does. It is the court, therefore, and not the receiver, which holds, administers, and disposes of the property in his hands, and so long as the property remains undisposed of, action by the court is necessary. In such a case there is judicial action to be arrested, injury to be prevented, and a writ of prohibition is appropriate for that purpose. The writ runs to the court and operates directly upon the court, but indirectly upon the receiver. (See case of *Havemeyer vs. Superior Court*, 84 Cal., p. 389.)

In the case of *Yore vs. Superior Court* (108 Cal., 431-438) the petitioner obtained a judgment, and when he attempted to have it enforced was told by the sheriff, who had been appointed receiver of the defendant's property in another action, that he would not pay over to the plaintiff any of the money in his hands, as he held it as receiver. Thereupon, the plaintiff sought a writ of prohibition, requiring the court to desist from taking any further

proceedings under said appointment of receiver on the ground that the court had no jurisdiction to appoint a receiver in the action. And it having been determined by the Supreme Court that the receiver was appointed without authority, the writ of prohibition was granted.

This court having held in the case of *Sergia Reyes vs. Tan-Tonco*, that the court below exceeded its jurisdiction in appointing a receiver, it follows that the order making such appointment was void and therefore the restraining clause in said order forbidding judgment creditors from interfering with said property and enforcing their claims, was also void.

Judgment is therefore granted in favor of the plaintiff in this proceeding and it is ordered that a writ of prohibition issue, commanding the defendants absolutely to desist and refrain from further proceedings in said action of *Reyes vs. Tan-Tonco*, under the order appointing said receiver.

Arellano, C.J., Torres, Mapa, and Johnson, JJ., concur.
